

ORDINANCE NO. 06-22-418

AN ORDINANCE AUTHORIZING AND EMPOWERING COUNTY COMMISSIONERS OF FREDERICK COUNTY TO ISSUE, SELL AND DELIVER, AT ANY ONE TIME OR FROM TIME TO TIME, ITS TAX INCREMENT FINANCING BONDS IN ONE OR MORE SERIES AND IN A PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000 TO BE KNOWN AS "FREDERICK COUNTY, MARYLAND, TAXABLE TAX INCREMENT FINANCING BONDS SERIES 2006 (CENTERPARK LOT 11 DEVELOPMENT DISTRICT) SERIES 200_" PURSUANT TO THE PROVISIONS OF THE TAX INCREMENT FINANCING ACT, CONSISTING OF SECTIONS 14-201 THROUGH 14-214 OF ARTICLE 41 OF THE ANNOTATED CODE OF MARYLAND (2003 REPLACEMENT VOLUME AND 2004 SUPPLEMENT), AS AMENDED, FOR THE SOLE AND EXCLUSIVE PURPOSES DESCRIBED IN THIS ORDINANCE; APPROVING, PURSUANT TO NOTICE AND FOLLOWING A PUBLIC HEARING, THE ISSUANCE OF THE BONDS REQUESTED IN THE LETTER OF INTENT FROM MEDIMMUNE, INC. TO COUNTY COMMISSIONERS OF FREDERICK COUNTY DATED JUNE 9, 2006; ACCEPTING SAID LETTER OF INTENT; MAKING CERTAIN LEGISLATIVE FINDINGS, AMONG OTHERS, CONCERNING THE PUBLIC BENEFIT AND PURPOSE OF SUCH BONDS; PROVIDING THAT SUCH BONDS AND THE PRINCIPAL, INTEREST OR PENALTIES THEREON SHALL BE SPECIAL OBLIGATIONS OF COUNTY COMMISSIONERS OF FREDERICK COUNTY REPAYABLE SOLELY FROM TAX REVENUES OF THE COUNTY ALLOCATED AND PAID TO A SPECIAL FUND HERETOFORE CREATED BY THE COUNTY FOR SUCH PURPOSE, AND CERTAIN OTHER MONEYS WHICH MAY BE AVAILABLE FOR SUCH PURPOSE, AND THAT NEITHER SUCH BONDS NOR THE PRINCIPAL, INTEREST OR PENALTIES THEREON SHALL EVER CONSTITUTE AN INDEBTEDNESS OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF COUNTY COMMISSIONERS OF FREDERICK COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR CHARTER PROVISION OR STATUTORY LIMITATION AND THAT NEITHER SHALL EVER CONSTITUTE OR GIVE RISE TO ANY PECUNIARY LIABILITY OF COUNTY COMMISSIONERS OF FREDERICK COUNTY; AUTHORIZING AND EMPOWERING THE PRESIDENT OF THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, PRIOR TO THE ISSUANCE, SALE AND DELIVERY OF SUCH BONDS, TO PRESCRIBE THE FORM, TENOR, TERMS AND CONDITIONS OF AND SECURITY FOR SUCH BONDS, AND TO PRESCRIBE, DETERMINE, PROVIDE FOR AND APPROVE VARIOUS OTHER MATTERS, DETAILS, DOCUMENTS AND PROCEDURES IN CONNECTION WITH THE AUTHORIZATION, ISSUANCE, SECURITY, SALE AND PAYMENT FOR SUCH BONDS; AND GENERALLY PROVIDING FOR AND DETERMINING VARIOUS MATTERS AND DETAILS IN CONNECTION WITH THE AUTHORIZATION, ISSUANCE, SECURITY, SALE AND PAYMENT OF SUCH BONDS.

RECITALS

Under the provisions of the Tax Increment Financing Act, consisting of Sections 14-201 through 14-214 of Article 41 of the Annotated Code of Maryland, as amended (the "Act"), any Maryland county may borrow money by issuing and selling bonds for the purpose of financing the development, including new development, redevelopment, revitalization, and renovation, of an industrial, commercial, or residential area. The bonds authorized by the Act may be special obligations of the county payable from a special fund created by the county for the purpose of paying the debt service on the bonds and from other assets or revenues pledged by a county for that purpose.

County Commissioners of Frederick County, a body politic and corporate and a political subdivision of the State of Maryland (the "County"), is one of the counties of Maryland which is authorized to issue bonds under the Act. Before issuing those bonds, the Board of County Commissioners of Frederick County (the "Board") is required to designate a contiguous area within Frederick County as a "development district" and to pledge that it will allocate a portion of real property taxes derived from the development district to the special fund for the payment of the debt service on the bonds issued under the Act. The portion of the real property taxes to be so allocated is all or any portion of the amount derived from the incremental increase of the assessable base of the development district over the original assessable base of the development district as of the date specified in the Act.

By Resolution No. 96-09 adopted on May 7, 1990, pursuant to the Act (the "Resolution"), the Board created a development district in order to encourage and promote the development, including the new development, redevelopment, revitalization, and renovation, of a contiguous industrial and commercial area within the County known as the "CenterPark Lot 11 Development District" (the "Original District") and a special fund known as the "CenterPark Lot 11 Development District Special Fund" (the "Special Fund"). By Resolution No. 06-22 adopted on June 20, 2006, the Board added property to the Original District (the "Additional Property") thereby expanding the boundaries of the Original District. The Original District together with the Additional Property is hereafter referred to as the "Development District". Resolution No. 96-09 as amended/supplemented by Resolution No. 06-22 is hereafter referred to as the "Resolution". The County further determined by the Resolution to apply the incremental real property tax revenues and the proceeds of any bonds issued under the Act to provide expanded facilities for the benefit of an industrial and commercial area within the Development District (the "Project").

By Ordinance No. 98-19-221 (the "1998 Ordinance"), the County authorized the issuance of tax increment financing bonds in an amount not to exceed \$1,300,000.00 designated "Frederick County, Maryland Taxable Tax Increment Financing Bonds Series 1998 (CenterPark Lot 11 Development District) (the "1998 Bonds") which 1998 Bonds in the principal amount of \$1,090,000.00 were issued on October 30, 1998.

The creation of the Development District and the issuance of bonds under the Act will serve the public purposes of providing public improvements within the County, directly and indirectly enhancing the taxable base of the County, encouraging the development of commerce and industry within the County, and increasing employment within the County through the installation of utilities and other necessary improvements for the Development District, including streets and roads to, from, or within the Development District, parking, lighting, and other facilities.

The Project will consist of site acquisition and development including clearing, grading, paving of roads and parking, sidewalks and curbs, and installation of underground utilities, fencing and lighting.

The County has received a letter dated June 9, 2006 (the "Letter of Intent") from MedImmune, Inc., a Delaware corporation ("MedImmune"), in which it is requested that the County participate in the financing of the Project as described herein. The Project will be used by MedImmune as an expanded biotechnology manufacturing center.

The County, based upon the findings and determinations set forth below, has determined to finance the cost of the Project (to the fullest extent permitted by the Act) by the issuance, sale, and delivery, at any time or from time to time and in one or more series, of its bonds in an aggregate principal amount not to exceed \$5,000,000 and at a maximum annual rate of interest not to exceed 12% (the "Bonds") and to enter into one or more agreements with the owner or owners of the real property within the Development District (collectively, the "Development Agreement") specifying certain obligations of the owner or owners of that property with respect to the Project and to the payment of the bonds issued pursuant to this Ordinance. MedImmune and the County will enter into a Development Agreement relating to the Project and providing for MedImmune to make certain payments to the County under certain circumstances.

The Bonds issued pursuant to this Ordinance will not be general obligations of the County, but will be special obligations of the County payable solely from an as yet determined percentage of real property tax revenues of the County allocated and paid into the Special Fund, and certain other monies which may be made available for such purpose. Neither the Bonds nor the principal, interest or penalties thereon shall ever constitute an indebtedness or a charge against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision of statutory limitation and that neither shall ever constitute or give rise to any pecuniary liability of the County

Pursuant to Section 14-210 of the Act, the Board may implement its authority under the Act to issue its bonds, notes, or other similar instruments for the purpose of financing the costs of the Project and certain related costs of issuing the bonds, notes, or other similar instruments by enacting an ordinance which specifies and describes the proposed undertaking and states that it has complied with certain conditions precedent to the issuance of the obligations, specifies the maximum principal amount of the

obligations to be issued, and specifies the maximum rate or rates of interest the obligations are to bear.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY:

Section 1. Acting pursuant to the Act and the Resolution, it is hereby found and determined as follows:

(1) The creation of the Development District in Frederick County and the issuance of bonds under the Act will serve the public purposes of providing public improvements within the County, directly and indirectly enhancing the taxable base of the County, encouraging the development of commerce and industry within the County, and increasing employment within the County through the installation of utilities and other necessary improvements in the Development District including streets and roads to, from, or within the Development District, parking, sidewalks, curbs, lighting, and other facilities;

(2) By the adoption of the Resolution and the enactment of this Ordinance, the County has complied and will comply with the conditions precedent to the issuance of bonds under the Act by designating the Development District, creating the Special Fund, pledging that the portion of the real property taxes representing the levy on the "Tax Increment" (within the meaning of the Act and the Resolution) shall be paid into the Special Fund, and enacting this Ordinance which specifies the maximum principal amount of the bonds to be issued and the maximum rate or rates of interest the bonds are to bear;

(3) The Bonds will not be general obligations of the County and may not be secured by a pledge of the full faith and credit and unlimited taxing power of the County. The Bonds will be special obligations of the County payable solely from the real property tax revenues of the County allocated and paid into the Special Fund and certain other monies which may be made available for such purpose. Neither the Bonds nor the principal, interest or penalties thereon shall ever constitute an indebtedness or a charge against the general credit or taxing powers of County within the meaning of any constitutional or charter provision of statutory limitation and that neither shall ever constitute or give rise to any pecuniary liability of County;

(4) Issuance of the Bonds satisfies the County's "local contribution" requirement in connection with a financial accommodation of up to \$7,400,000 from the Maryland Department of Business and Economic Development ("DBED") to MedImmune, Inc.

Section 2. Subject to the provisions of the Resolution and this Ordinance, the County may issue, sell, and deliver the Bonds as special obligations of the County, at any time or from time to time and in one or more series, in an aggregate principal amount not

to exceed \$5,000,000, and the annual rate of interest which any bond bears may not exceed 12%. The principal of, premium, if any, and interest on the Bonds shall be payable solely from amounts of real property tax revenues of the County allocated and paid into the Special Fund and certain other monies which may be made available for such purpose. The County has not yet determined what percentage of the Tax Increment will be available to pay debt service on the Bonds. No Bonds will be issued until DBED's financial accommodations are in place and the Tax Increment (as hereafter defined) is sufficient to adequately cover debt service on the Bonds.

The Letter of Intent is hereby accepted by the County and the President of the Board is hereby authorized and directed to execute the Letter of Intent in order to evidence such acceptance.

Section 3. The County shall use the proceeds of the Bonds of any series for the purpose of financing the costs (to the fullest extent permitted by the Act) of the Project.

Section 4. Any Development Agreement entered into with respect to the Bonds of any series shall require that (1) the proceeds of the Bonds of such series be used solely to finance the costs (to the fullest extent permitted by the Act) of the Project and (2) the owner or owners of the real property located within the Development District must make payments to the purchaser of the Bonds sufficient to pay the principal of and interest and premium, if any, on the Bonds of such series when and as the same become due and payable in the event that moneys in the Special Fund are not sufficient to pay the same.

Section 5. *Neither the Bonds of any series nor the interest thereon shall ever constitute a pledge of the full faith and credit of the County and neither shall ever constitute or give rise to any pecuniary liability of the County*

Section 6. The Bonds shall be designated "Frederick County, Maryland, Taxable Tax Increment Financing Bonds (CenterPark Lot 11 Development District) Series [insert year of issuance]" which designation may be added to or amended by the President of the Board in the Written Order hereafter referred to.

Section 7. The Bonds shall be executed in the name of the County and on its behalf by the President or the Vice President of the Board, by his or her manual or facsimile signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon by the County Manager of the County.

Section 8. The Development Agreement and, where applicable, all other documents as the President or the Vice President of the Board deems necessary to effectuate the issuance, sale, and delivery of the Bonds of any series, shall be executed in the name of the County and on its behalf by the President or the Vice President of the Board by his or her manual signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon by the County Manager of the County.

Section 9. If any officer whose signature or countersignature or a facsimile of whose signature or countersignature appears on the Bonds of any series or any of the aforesaid documents ceases to be such officer before the delivery of the Bonds of such series or any of the other aforesaid documents, such signature or countersignature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

Section 10. The President or the Vice President of the Board, the Treasurer, the Director of Finance and the County Manager of the County, and all other officials of the County are hereby authorized and empowered to do all such acts and things and to execute such documents and certificates as the President or the Vice President of the Board may determine to be necessary to carry out and to comply with the provisions of the Act, the Resolution, and this Ordinance, subject to the limitations set forth in the Act, the Resolution, and this Ordinance.

Section 11. As permitted by the Act, the Bonds of any series shall be sold at private (negotiated) sale at par, and the Bonds of such series shall be sold in such manner and upon such terms as the President or the Vice President of the Board deem to be in the best interests of the County.

Section 12. Prior to the issuance, sale, and delivery of the Bonds of any series, the President or the Vice President of the Board, by Written Order (the "Written Order"):

(1) shall prescribe the form, tenor, terms, conditions and designation of and the security for the Bonds of such series;

(2) shall prescribe the principal amounts (not to exceed the aggregate amount specified in this Ordinance), rate or rates of interest (within the limits specified in this Ordinance), denominations, date, and maturity or maturities (within the limits prescribed in the Act), the time and place or places of payment of the Bonds of such series, and the terms and conditions and details under which the Bonds of such series may be called for redemption prior to their stated maturities;

(3) if necessary, may appoint a servicer, trustee, a bond registrar, or a paying agent or agents, which may be a bank or trust company within or outside the State of Maryland, for the Bonds of such series;

(4) shall approve the form and contents of a Development Agreement and such other documents, including (without limitation) trust agreements, assignments, mortgages, deeds of trust, and security instruments, to which the County shall be a party and which may be necessary to effectuate the issuance, sale, and delivery of the Bonds of such series;

(5) may prepare and distribute, in conjunction with representatives of the owner or owners of the real property located within the Development District and any prospective purchasers of or underwriters for the Bonds of any series, both a preliminary and a final official statement, private placement memorandum, limited offering memorandum, or other similar document in connection, with the offering and sale of the Bonds of any series, if such preliminary and final official statement, private placement memorandum, limited offering memorandum, or other similar document are determined to be necessary or desirable for the offering and sale of the Bonds of such series in order to comply with applicable Federal and state securities laws;

(6) may execute and deliver a contract or contracts for the purchase and sale of the Bonds of any series (or any portion thereof) in form and content satisfactory to the President or the Vice President of the Board;

(7) shall determine the time of execution, issuance, sale, and delivery of the Bonds of such series and shall prescribe any and all other details of the Bonds of such series;

(8) shall determine the method, and shall approve the terms, of the sale of the Bonds of such series, as provided in the Resolution and this Ordinance;

(9) shall provide for the payment of all costs, fees, and expenses incurred by or on behalf of the County in connection with the issuance, sale, and delivery of the Bonds of such series, including (without limitation) costs of printing (if any) and issuing the Bonds of such series, legal expenses (including the fees of bond counsel), trustee fees, accounting fees, and compensation to any person in connection with the issuance of the Bonds;

(10) may provide for the issuance and sale (subject to the passage at the time of any appropriate resolution or ordinance authorizing the same) of one or more series of additional bonds and one or more series of refunding bonds;

(11) may provide for the funding of sinking funds or reserves for the Bonds of such series and for the funding of the payment of interest on the Bonds of such series in such amounts, or for such period, as the President or the Vice President of the Board deems reasonable;

(12) may provide insurance for the payment of the principal of and interest on the Bonds of any series under an insurance agreement approved by the President or the Vice President of the Board, or may provide for such payment under a letter or credit, guaranty, line of credit, or similar credit support agreement approved by the President or the Vice President of the Board;

(13) to the extent that other obligated persons with respect to the Bonds of any series have not assured compliance with, or to the extent that the offering of the series of

Bonds is not exempt from the requirements of, Rule 15c2-12 of the United States Securities and Exchange Commission, shall determine the form and contents of any written agreement or contract required by law for the benefit of the holders of any series of the Bonds under which agreement or contract the County will undertake to provide annual financial information, audited financial statements, material events notices, and other information to the extent required by such Rule;

(14) in accordance with Section 14-208 of the Act, may prescribe that the use of moneys in the Special Fund in excess of the unpaid debt service on the Bonds in any fiscal year shall be restricted to certain purposes so as to prohibit their use for other purposes, or may prohibit certain uses of such excess; and

(15) specify and prescribe any and all things necessary, proper, or expedient in connection with the issuance, sale, and delivery of the Bonds of such series and in order to accomplish the legislative intent of the Act and the public purposes of the Resolution and this Ordinance, subject to the limitations set forth in the Act and any limitations prescribed by the Resolution and this Ordinance.

Section 13. All actions heretofore taken by any officer of the County in connection with the transactions contemplated by or otherwise referred to in this Ordinance be, and they hereby are, ratified, approved, and confirmed in all respects.

Section 14. For purposes of this Section 14, the following words shall have the following meanings:

“2006 Actual Incremental Taxes” means the actual amount of increased taxes resulting from the Tax Increment payable on the Additional Property by the Property Owner.

“Original Assessable Base” (“OAB”) means the assessable base of the Additional Property on January 1, 2005.

“Base Taxes” means taxes produced by a levy of the annual tax rate upon the OAB.

“Excluded Taxes” means any taxes other than those taxes which would be payable to the County. Excluded Taxes also include, without limitation, Base Taxes, real estate taxes payable to the State of Maryland, any local city, municipality, school, fire or other district and any other taxes other than those payable to the County Fire District taxes which may currently or hereafter be assessed against the Property payable to the County shall be deemed Excluded Taxes.

“Tax Increment” means that amount by which the revised assessable base exceeds the OAB.

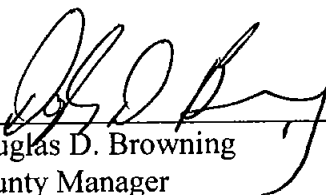
The Special Fund created by Section 5 of the Resolution shall be held either by the County or on behalf of the County by Bank of America, N.A. (the "Servicer). Either the County or the Servicer shall deposit to the Special Fund all or a portion of the 2006 Actual Incremental Taxes. 2006 Actual Incremental Taxes to be deposited pursuant to this Section 14 shall be addition to Actual Incremental Taxes from the Original District deposited to the Special Fund pursuant to Section 14 of the 1998 Ordinance, less Excluded Taxes at such time and in such manner as shall be set forth in a Servicing Agreement between the County, the Servicer, MedImmune and the purchaser of the Bond. The County does hereby grant, bargain, sell, convey, pledge and assign to the Owner of the Bond all right, title and interest of the County in and to and grants to the owner of the Bond a security interest in, the Special Fund and monies deposited therein, including investment earnings thereon, provided that such security interest shall be *pari passu* with the interest granted to the holder of the 1998 Bonds.

Section 15. The provisions of this Ordinance are severable, and if any provision, sentence, clause, section or part hereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or their application to other persons or circumstances and the remaining provisions shall be construed so as to give practical realization to the public purposes intended to be achieved hereunder and the protection against pecuniary liability to be afforded to the County. It is hereby declared to be the legislative intent that this Ordinance would have been passed if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and if the person or circumstances to which this Ordinance or any part hereof are inapplicable had been specifically exempted herefrom.

Section 16. This Ordinance shall take effect on the date of its enactment by the Board.

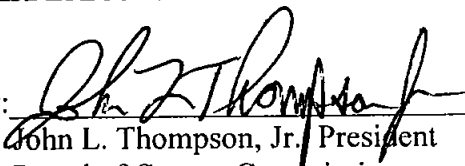
ENACTED this 20th day of June, 2006

ATTEST



Douglas D. Browning
County Manager

COUNTY COMMISSIONERS OF
FREDERICK COUNTY

By: 

John L. Thompson, Jr. President
Board of County Commissioners
of Frederick County